

seem to be quite obvious, that if the defendants were made to account for profits to the representative of their deceased partner, for the use of this real estate as a part of the partnership property; and are also compelled to pay the complainant, as widow, a proportion of those profits as arrears of dower, they will, to that extent, be paying twice for the use of the same property. Her deceased husband, who owned nearly one half of all the real estate employed in the business of the partners, would receive—or rather she, as his representative, would receive nearly one moiety of the profits, of which, as there were no children of the marriage, she, as widow, would be entitled to one half; and then, upon the ground taken by the complainants, she would as dowress, receive one-third of the supposed annual value of the interest of her husband in the same lands. It appears to me, there can be no equity in this, and it cannot be allowed.

There are, moreover, circumstances attending this property, which would seem to take it out of the general rule applicable to ordinary cases of bills for dower, and rents and profits. The general rule is well settled, that the courts will decree dower, and rents and profits, to the widow from the death of her husband. *Wells and Wife vs. Beall, 2 Gill and Johns.*, 468.

But this property, being partnership property, and as such subject to the partnership engagements; and as upon the death of the deceased partner it descended to his heirs at law, clothed with an implied or constructive trust, until the purposes of the partnership were accomplished; the right of the widow to dower was postponed until those purposes should be accomplished by paying all claims against the partnership, and adjusting the accounts. Such was the decision of the Court of Appeals, when this case was before it in 1847.

The right, therefore, of the widow was not a fixed and absolute right, but one depending upon the contingency, that there would be a surplus after paying the debts of the partnership; and consequently it cannot, I think, be maintained, that the principles applicable to cases in which the title of the widow is clear, and consummate by the death of the husband, will apply to this case. The property was subject to a trust para-